

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BRIAN TOTIN,

Plaintiff,

-against-

BOND NEW YORK PROPERTIES LLC, BOND
NEW YORK PROPERTIES BROKERAGE LLC, and
BOND NEW YORK REAL ESTATE CORP.,

Defendants.

Case: 21-cv-02991

ANSWER

Defendants Bond New York Properties LLC, Bond New York Properties Brokerage LLC, and Bond New York Real Estate Corp. (hereinafter collectively “Defendants”), by and through their attorneys, Wilson Elser Moskowitz Edelman & Dicker, LLP, hereby answer and respond to the allegations in the Complaint (“Complaint”) of Plaintiff Brian Totin (“Plaintiff”) in the above action as follows:

ANSWERING “NATURE OF THE ACTION”

1. Defendants admit that the action is styled as one for copyright infringement and unfair competition as alleged in paragraph 1 of the Complaint, but deny that Defendants have infringed any copyrights or engaged in any acts of unfair competition. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 1 of the Complaint, and on that basis deny them.

2. Defendants deny the allegations contained in paragraph 2 of the Complaint.

3. Defendants deny the allegations contained in paragraph 3 of the Complaint.

4. Responding to paragraph 4 of the Complaint, Defendants admit that Bond New York Properties LLC, now known as Bond New York Properties Brokerage LLC, is a licensed

real estate broker, but deny that Bond New York Real Estate Corp. is a licensed real estate broker. Defendants further state that they lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 4 of the Complaint, and on that basis deny them. Defendants refer to the statute cited in paragraph 4 of the Complaint for the true contents thereof, and refer all questions of law to this Honorable Court.

ANSWERING “JURISDICTION AND VENUE”

5. Defendants state that the allegations contained in paragraph 5 of the Complaint set forth legal conclusions to which no response is required, but to the extent a response may be deemed required, admit that the Complaint purports to set forth claims for copyright infringement under the Copyright Act and unfair competition under the Lanham Act, and Defendants refer all questions of law to this Honorable Court.

6. Defendants state that the allegations contained in paragraph 6 of the Complaint set forth legal conclusions to which no response is required, and Defendants refer all questions of law to this Honorable Court. To the extent a response is deemed required, Defendants deny that they infringed upon Plaintiff’s copyrights as alleged in paragraph 6 of the Complaint.

7. Defendants state that the allegations contained in paragraph 7 of the Complaint set forth legal conclusions to which no response is required, and Defendants refer all questions of law to this Honorable Court. To the extent a response is deemed required, Defendants deny that they infringed upon Plaintiff’s copyrights as alleged in paragraph 7 of the Complaint.

ANSWERING “PARTIES”

8. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Complaint, and on that basis deny the allegations contained therein.

9. Responding to paragraph 9 of the Complaint, Defendants admit that Bond New York Properties LLC is a New York domestic limited liability company, now known as Bond New York Properties Brokerage LLC, and that it is a licensed real estate broker, holding license number 109917421. Except as expressly admitted, Defendants deny all other allegations contained in paragraph 9 of the Complaint.

10. Responding to paragraph 10 of the Complaint, Defendants admit that Bond New York Properties Brokerage LLC is a New York domestic limited liability company. Except as expressly admitted, Defendants deny all other allegations contained in paragraph 10 of the Complaint.

11. Responding to paragraph 11 of the Complaint, Defendants admit that Bond New York Real Estate Corp. is a New York domestic business corporation. Except as expressly admitted, Defendants deny all other allegations contained in paragraph 11 of the Complaint as phrased.

12. Paragraph 12 of the Complaint does not contain any factual allegations that require a response.

ANSWERING “ALLEGATIONS COMMON TO ALL CLAIMS”

13. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint, and on that basis deny the allegations contained therein and refers to the documents referenced for the contents thereof.

14. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint, and on that basis deny the allegations contained therein and refers to the documents referenced for the contents thereof.

15. Defendants lack knowledge or information sufficient to form a belief as to the truth

of the allegations contained in paragraph 15 of the Complaint, and on that basis deny the allegations contained therein and refers to the documents referenced for the contents thereof.

16. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Complaint, and on that basis deny the allegations contained therein and refers to the documents referenced for the contents thereof.

17. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Complaint, and on that basis deny the allegations contained therein and refers to the documents referenced for the contents thereof.

18. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the Complaint, and on that basis deny the allegations contained therein and refers to the documents referenced for the contents thereof.

19. Paragraph 19 of the Complaint does not contain any factual allegations that require a response.

20. Paragraph 20 of the Complaint does not contain any factual allegations that require a response.

21. Paragraph 21 of the Complaint does not contain any factual allegations that require a response.

22. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Complaint, and on that basis deny the allegations contained therein and refers to the documents referenced for the contents thereof.

23. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the Complaint, and on that basis deny the allegations contained therein and refers to the documents referenced for the contents thereof.

24. Paragraph 24 of the Complaint does not contain any factual allegations that require a response.

25. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the Complaint, and on that basis deny the allegations contained therein and refers to the documents referenced for the contents thereof.

26. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of the Complaint, and on that basis deny the allegations contained therein and refers to the documents referenced for the contents thereof.

27. Paragraph 27 of the Complaint does not contain any factual allegations that require a response.

28. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of the Complaint, and on that basis deny the allegations contained therein and refers to the documents referenced for the contents thereof.

29. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the Complaint, and on that basis deny the allegations contained therein and refers to the documents referenced for the contents thereof.

30. Paragraph 30 of the Complaint does not contain any factual allegations that require a response.

31. Defendants state that the allegations contained in paragraph 31 of the Complaint set forth legal conclusions to which no response is required, and Defendants refer all questions of law to this Honorable Court.

32. Paragraph 32 of the Complaint does not contain any factual allegations that require a response.

33. Paragraph 33 of the Complaint does not contain any factual allegations that require a response.

34. Defendants state that the allegations contained in paragraph 34 of the Complaint set forth legal conclusions to which no response is required, and Defendants refer all questions of law to this Honorable Court. To the extent a response is deemed required, Defendants deny the allegations contained in paragraph 34 of the Complaint.

35. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35 of the Complaint, and on that basis denies the allegations contained therein.

36. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36 of the Complaint, and on that basis denies the allegations contained therein.

37. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the Complaint, and on that basis denies the allegations contained therein.

38. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the Complaint, and on that basis deny the allegations contained therein and refers to the documents referenced for the contents thereof.

39. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39 of the Complaint, and on that basis denies the allegations contained therein.

40. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40 of the Complaint, and on that basis deny the

allegations contained therein and refers to the documents referenced for the contents thereof.

41. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41 of the Complaint, and on that basis denies the allegations contained therein.

42. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42 of the Complaint, and on that basis denies the allegations contained therein.

43. Paragraph 43 of the Complaint does not contain any factual allegations that require a response.

44. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44 of the Complaint, and on that basis deny the allegations contained therein and refers to the documents referenced for the contents thereof.

45. Responding to paragraph 45 of the Complaint, Defendants admit that they operate the website at URL <http://www.bondnewyork.com>. Except as expressly admitted, Defendants deny all other allegations contained in paragraph 45 of the Complaint.

46. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 46 of the Complaint, and on that basis denies the allegations contained therein.

47. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 47 of the Complaint, and on that basis denies the allegations contained therein.

48. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48 of the Complaint, and on that basis denies the

allegations contained therein.

49. Paragraph 49 of the Complaint does not contain any factual allegations that require a response.

50. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50 of the Complaint, and on that basis deny the allegations contained therein and refers to the documents referenced for the contents thereof.

51. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 51 of the Complaint, and on that basis denies the allegations contained therein.

52. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 52 of the Complaint, and on that basis deny the allegations contained therein and refers to the documents referenced for the contents thereof.

53. Defendants deny the allegations contained in paragraph 53 of the Complaint as phrased.

54. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 54 of the Complaint, and on that basis denies the allegations contained therein.

55. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 55 of the Complaint, and on that basis deny the allegations contained therein and refers to the documents referenced for the contents thereof.

56. Defendants deny the allegations contained in paragraph 56 of the Complaint as phrased.

57. Defendants lack knowledge or information sufficient to form a belief as to the truth

of the allegations contained in paragraph 57 of the Complaint as phrased, and on that basis deny the allegations contained therein and refer to the statute cited for the true contents thereof.

58. Defendants state that the allegations contained in paragraph 58 of the Complaint set forth legal conclusions to which no response is required, and Defendants refer all questions of law to this Honorable Court. Defendants refer to the statute cited for the true contents thereof.

59. Defendant denies the allegations contained in paragraph 59 of the Complaint as phrased.

60. Defendants state that the allegations contained in paragraph 60 of the Complaint set forth legal conclusions to which no response is required, and Defendants refer all questions of law to this Honorable Court. To the extent a response is deemed required, Defendants deny the allegations contained in paragraph 60 of the Complaint.

61. Defendants deny the allegations contained in paragraph 61 of the Complaint.

62. Defendants deny the allegations contained in paragraph 62 of the Complaint.

63. Defendants state that the allegations contained in paragraph 63 of the Complaint set forth legal conclusions to which no response is required, and Defendants refer all questions of law to this Honorable Court. To the extent a response is deemed required, Defendants deny the allegations contained in paragraph 63 of the Complaint.

64. Defendants state that the allegations contained in paragraph 64 of the Complaint set forth legal conclusions to which no response is required, and Defendants refer all questions of law to this Honorable Court. To the extent a response is deemed required, Defendants deny the allegations contained in paragraph 64 of the Complaint.

65. Responding to paragraph 65 of the Complaint, Defendants admit that Bond New York Properties LLC is a licensed real estate broker. Defendants deny the remaining allegations

contained in paragraph 65 of the Complaint.

66. Defendants deny the allegations contained in paragraph 66 of the Complaint.

ANSWERING “FIRST CAUSE OF ACTION”

67. Defendants deny the allegations contained in paragraph 67 of the Complaint, and repeat and incorporate the answers and allegations set forth at paragraphs 1 through 66 above as if fully set forth herein.

68. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 68 of the Complaint, and on that basis deny the allegations contained therein.

69. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 69 of the Complaint, and on that basis deny the allegations contained therein.

70. Defendants deny the allegations contained in paragraph 70 of the Complaint.

ANSWERING “SECOND CAUSE OF ACTION”

71. Defendants deny the allegations contained in paragraph 71 of the Complaint, and repeat and incorporate the answers and allegations set forth at paragraphs 1 through 70 above as if fully set forth herein.

72. Defendants state that the allegations contained in paragraph 72 of the Complaint set forth legal conclusions to which no response is required, and Defendants refer all questions of law to this Honorable Court. To the extent a response is deemed required, Defendants deny the allegations contained in paragraph 72 of the Complaint.

73. Defendants deny the allegations contained in paragraph 73 of the Complaint.

74. Defendants deny the allegations contained in paragraph 74 of the Complaint.

75. Defendants deny the allegations contained in paragraph 75 of the Complaint.

ANSWERING “THIRD CAUSE OF ACTION”

76. Defendants deny the allegations contained in paragraph 76 of the Complaint, and repeat and incorporate the answers and allegations set forth at paragraphs 1 through 75 above as if fully set forth herein.

77. Defendants deny the allegations contained in paragraph 77 of the Complaint.

78. Defendants deny the allegations contained in paragraph 78 of the Complaint.

79. Defendants deny the allegations contained in paragraph 79 of the Complaint.

80. Defendants deny the allegations contained in paragraph 80 of the Complaint.

ANSWERING PLAINTIFF’S “PRAYER FOR RELIEF”

The Prayer for Relief requires no response. To the extent any response is deemed required, Defendants deny that Plaintiff should be granted any of the relief requested in paragraphs 1 through 6.

DEFENSES AND AFFIRMATIVE DEFENSES

Defendants assert the following additional defenses to Plaintiff’s claims. The assertion of such defenses, or the designation of a defense as an “affirmative defense,” does not admit that Defendants have the burden of proving the matter asserted.

**FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)**

The Complaint fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE
(Laches)**

Plaintiff’s claims are barred in whole or in part under principles of equity, including without limitation, laches.

THIRD AFFIRMATIVE DEFENSE
(Waiver)

Plaintiff's claims are barred in whole or in part under principles of equity, including without limitation, waiver.

FOURTH AFFIRMATIVE DEFENSE
(Estoppel)

Plaintiff's claims are barred in whole or in part under principles of equity, including without limitation, estoppel.

FIFTH AFFIRMATIVE DEFENSE
(Acquiescence)

Plaintiff's claims are barred in whole or in part under principles of equity, including without limitation, acquiescence.

SIXTH AFFIRMATIVE DEFENSE
(License)

Plaintiff's claims are barred in whole or in part because Plaintiff granted Defendants an implied license for use of the works.

SEVENTH AFFIRMATIVE DEFENSE
(No Statutory Damages or Attorney's Fees)

On information and belief, Plaintiff failed to register the works alleged in the complaint prior to the first date of Defendants' alleged infringement, and Plaintiff may therefore not recover statutory damages or attorney's fees for Defendants' alleged infringement of those works.

EIGHTH AFFIRMATIVE DEFENSE
(Lack of Standing)

On information and belief, Plaintiff's claims are barred, in whole or in part, by his lack of standing to assert a claim for copyright infringement due to defect in ownership of the applicable copyrights in the particular work or works.

NINTH AFFIRMATIVE DEFENSE
(Lack of Registration)

On information and belief, Plaintiff's claims are barred, in whole or in part, by the lack of a valid copyright registration for the works at issue in this action.

TENTH AFFIRMATIVE DEFENSE
(Innocent Infringement)

Plaintiff's claims are barred, or its remedies limited, because Defendants' use of the work at issue was made with innocent intent and without any belief that any of its acts constituted an infringement or violation.

ELEVENTH AFFIRMATIVE DEFENSE
(No Damages)

Plaintiff has not suffered any injury or damages that are the result or proximate result of any act, affirmative or otherwise, allegedly committed by Defendants, and therefore the relief sought by Plaintiff cannot be granted.

TWELFTH AFFIRMATIVE DEFENSE
(No Bad Faith)

The Complaint fails because Defendants have conducted themselves at all times in good faith, with a reasonable belief that its actions did not constitute a violation or infringement of any other person or entity's rights.

THIRTEENTH AFFIRMATIVE DEFENSE
(No Substantial Similarity)

Plaintiff's copyright claims fail because Plaintiff's copyright registrations are for a compilation of numerous photographs and Defendants, to the extent they used any portion of the compilation, used a de minimis portion that is not substantially similar to the registered work as a whole.

FOURTEENTH AFFIRMATIVE DEFENSE
(No Volitional Act)

Plaintiff's first cause of action for direct copyright infringement fails because Defendants did not commit any volitional acts of infringement.

FIFTEENTH AFFIRMATIVE DEFENSE
(Joinder)

Plaintiff's second cause of action for vicarious copyright infringement fails because Plaintiff failed to join a necessary party.

SIXTEENTH AFFIRMATIVE DEFENSE
(No Likelihood of Confusion)

Plaintiff's third cause of action under the Lanham Act fails because there is no actual or likelihood of confusion among consumers.

SEVENTEENTH AFFIRMATIVE DEFENSE
(No Consumer Harm)

Plaintiff's third cause of action under the Lanham Act fails because the statements complained of have not caused consumer harm.

EIGHTEENTH AFFIRMATIVE DEFENSE
(No False Statement)

Plaintiff's third cause of action under the Lanham Act fails because the statements complained of are not false or misleading.

RESERVATION OF RIGHT TO AMEND

To the extent Defendants may have other separate and/or additional defenses of which they are not aware, Defendants reserve the right to assert them by amendment to this Answer as discovery continues.

JURY DEMAND

Defendants demand a trial by jury.

WHEREFORE, Defendants respectfully requests that the Complaint asserted against them be dismissed in its entirety and all relief requested therein be denied, and that the Court award Defendants such further relief as the Court deems just and proper.

Dated: June 18, 2021

Respectfully submitted,

WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP

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